

HCCI Exhibit 24

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
FIELDWOOD ENERGY LLC,	§	
et al.,	§	Case No. 20-33948 (MI)
	§	
Debtors.	§	

REMOTE ORAL DEPOSITION OF

BRETT CUPIT

Houston, Texas

June 3, 2021

10:03 a.m.

Reported by:

Micheal A. Johnson, RDR, CRR

Job No. 720271

1 REMOTE ORAL DEPOSITION OF BRETT CUPIT,
2 produced at the instance of Zurich American
3 Insurance Company, in the above-styled and numbered
4 cause on the 3rd day of June, 2021, at 10:03 a.m.,
5 before Micheal A. Johnson, RDR, CRR, reported by
6 realtime stenographic means, at the location of the
7 witness, Houston, Texas, pursuant to Notice of Oral
8 Deposition, and in accordance with the Federal Rules
9 of Civil Procedure.

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26 ALSO PRESENT:

27 Sergio Garza, Apache In-House Counsel
28 David Bernal, Apache In-House Counsel

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1 PROCEEDINGS

2 BRETT CUPIT,

3 called as a witness, having been duly sworn, was
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. ROBERTS:

7 Q. Mr. Cupit, I am Steve Roberts. I
8 represent Zurich American Insurance Company. You
9 are here today as the corporate representative for
10 Apache Corporation pursuant to a notice of
11 deposition to Apache, correct?

12 A. Yes.

13 Q. Your counsel was kind enough to send me
14 your LinkedIn profile, so I'm just going to ask a
15 couple questions about your background.

16 You have a bachelor's degree in petroleum
17 engineering from Texas A&M, correct?

18 A. Yes.

19 Q. And you worked for Shell for almost
20 five years as a petroleum engineer, as a reservoir
21 engineer?

22 A. Yes.

23 Q. And then you graduated from Loyola
24 College of Law in 2000?

25 A. Correct.

1 Q. You have worked for Apache in the legal
2 department for over 17 years now, correct?

3 A. Coming up on 17 years.

4 Q. Okay. Your title now is assistant
5 general counsel, correct?

6 A. Correct.

7 Q. And I'm going to read the description on
8 LinkedIn and then ask you the question: Managing
9 domestic operational legal transactional and
10 prelitigation matters for Apache's domestic assets
11 including onshore and in the Gulf of Mexico.

12 What does it mean that you're managing
13 domestic operational legal transactional and
14 prelitigation matters?

15 A. Typically it means that I'm managing all
16 of our transactional work and legal advice for our
17 operational teams throughout our domestic assets and
18 offshore.

19 Q. Okay.

20 A. And that includes a couple of attorneys
21 that report to me.

22 Q. All right.

23 A. And then if a matter goes to general --
24 to litigation, I generally hand it off to one of our
25 litigators, although sometimes I remain involved

1 just from a background standpoint.

2 Q. So in your capacity as assistant general
3 counsel, you advise executives of Apache Corporation
4 on certain legal matters, right?

5 A. From time to time.

6 Q. Right. And you're not a decision-maker
7 in terms of agreeing to the terms of an agreement;
8 you're an advisor. Would that be a fair statement?

9 MR. MORFEY: Objection, vague.

10 MR. ROBERTS: I'm sorry?

11 MR. MORFEY: I just objected, vague.

12 BY MR. ROBERTS:

13 Q. You can answer the question.

14 A. On business matters, I -- my clients make
15 the decisions, yes.

16 Q. So in December of last year, Apache
17 entered into a term sheet or a restructuring support
18 agreement with Friendswood [sic], correct?

19 A. With who?

20 Q. With Fieldwood?

21 A. Yes, we entered into a term sheet last
22 summer.

23 Q. And what was your role in that, if any?

24 A. I was involved in negotiating and
25 drafting and discussions with Fieldwood as we

1 prepared the terms.

2 Q. And who with Apache would be the person
3 or persons to agree to the terms of that term sheet
4 on behalf of Apache?

5 A. It was put together by Anthony Lannie and
6 myself and ultimately signed off by a suite of
7 executives, including John Christmann and Steve
8 Riney and Ben Rodgers.

9 Q. John Christmann. Can you spell that,
10 please?

11 A. C-h-r-i-s-t-m-a-n-n.

12 Q. I'm sorry, what were the other two names?

13 A. Steve Riney, R-i-n-e-y, Ben Rodgers,
14 R-o-d-g-e-r-s.

15 Q. And what is Mr. Christmann's title?

16 A. He is the CEO.

17 Q. What about Mr. Riney?

18 A. He is the CFO.

19 Q. And Mr. Rodgers?

20 A. He is the treasurer.

21 Q. What was the purpose -- what was Apache's
22 purpose in entering into the restructuring support
23 agreement?

24 A. Well, we were engaged by Fieldwood to
25 discuss a potential restructuring organization and

1 that's the -- the term sheet is the result of those
2 discussions.

3 Q. Well, prior to entering into the term
4 sheet, let's -- I would like to dig into a little
5 background.

6 It's true then, in 2013 Fieldwood
7 acquired certain assets in the Gulf of Mexico from
8 Apache, correct?

9 A. That's correct.

10 Q. And in connection with that acquisition,
11 there were several related agreements, one of which
12 was a decommissioning agreement, correct?

13 A. That's correct.

14 Q. And the decommissioning agreement
15 generally involved the obligations of Fieldwood to
16 abide by decommissioning obligations in relation to
17 the assets dealt by Apache and Apache's rights in
18 connection with the decommissioning of such assets
19 if Fieldwood did not meet its obligations. That's a
20 long question, but is that a -- generally a fair
21 characterization of what's --

22 A. I'm not sure I understood your
23 characterization.

24 Q. Okay. How would you characterize the
25 decommissioning agreement entered back in 2013?

1 A. The decommissioning agreement generally
2 speaks for itself, but it outlines the obligations
3 and rights between the parties related to
4 decommissioning.

5 Q. Okay. And the restructuring -- the
6 restructuring agreement, did it involve terms that
7 would alter the rights and obligations of the
8 parties, being Apache and Fieldwood, under the
9 decommissioning agreement?

10 A. Did it alter the decommissioning
11 agreement, is that what you're asking?

12 Q. Yes, uh-huh.

13 A. It did not amend the decommissioning
14 agreement.

15 Q. By way of background, I want to make sure
16 I understood the decommissioning agreement prior to
17 the restructuring agreement and the relationship of
18 Apache and Fieldwood, and then after the agreement
19 and compare and contrast and then I'll ask you
20 questions about Apache's communications and
21 projections and plans.

22 So under the original decommissioning
23 agreement, the parties agreed to develop
24 decommissioning plans for the first few years,
25 correct?

1 A. I mean, the decommissioning agreement
2 speaks for itself.

3 Q. Were you involved in the decommissioning
4 agreement?

5 A. In what way?

6 Q. Were you involved in drafting it,
7 negotiating it?

8 A. I was not.

9 Q. Are you familiar with it?

10 A. Yes.

11 Q. So again, does the decommissioning
12 agreement provide for the parties developing
13 decommissioning plans?

14 A. The decommissioning agreement speaks for
15 itself. It says what's required between the
16 parties.

17 Q. Do you want me to pull up the
18 decommissioning --

19 A. Do you want to read it to me --

20 Q. -- agreement and read it or can you --

21 A. That's fine.

22 Q. -- just generally agree with the
23 question, that it calls for the parties developing
24 decommissioning plans?

25 A. There was an initial decommissioning

1 plan, if that's what you're asking.

2 Q. Okay. Is there currently a
3 decommissioning plan under the decommissioning
4 agreement?

5 A. I believe there was one that was put in
6 place a couple years ago when I was not really
7 managing the Gulf at the time.

8 Q. Is there currently a decommissioning plan
9 going forward under the decommissioning agreement?

10 A. I don't know what the current state of
11 the decommissioning plan is.

12 Q. Who would?

13 A. Potentially Brian Erickson, Gulf of
14 Mexico operations.

15 Q. Has Adobe [sic] estimated the annual cost
16 for decommissioning over the next three years?

17 A. Did who estimate?

18 Q. Apache.

19 A. Has Apache estimated that?

20 Q. Yes.

21 A. We do not have the data to estimate
22 decommissioning for Fieldwood's properties.

23 Q. You're entitled to that data under the
24 decommissioning agreement, aren't you?

25 A. If the decommissioning agreement says we

1 are, then I guess we are.

2 MR. ROBERTS: Is Mr. Perez on the
3 call?

4 MR. GENENDER: Steve, he is.

5 MR. ROBERTS: I see. Thank you. You
6 filed under seal and the motion for summary judgment
7 proceeding, a nonbinding version of the
8 decommissioning agreement which incorporates all the
9 amendments. That is what I would like to refer to,
10 but it is marked as professional eyes only and under
11 seal.

12 First I would like to confirm, is
13 there anybody on this call that is not subject to
14 the confidentiality agreement in place in this case?
15 I take from everyone's silence that they are bound
16 by it, they're representing they're bound by it by
17 not speaking up.

18 Mr. Perez, do you have --

19 MR. PEREZ: Mr. Roberts, normally the
20 way that we've handled these -- obviously, this is a
21 witness for a party who is a signatory to the
22 agreement and the way we've handled, you know, the
23 PEO documents is we've provided a copy to the
24 individual and asked them questions with respect to
25 the document as opposed to broadcasting it for

1 everyone else.

2 MR. ROBERTS: If everybody on the
3 call is subject to the confidentiality agreement,
4 why can't we just walk through it on the screen?

5 MR. PEREZ: I'd prefer to do it the
6 other way. That's kind of the way we've handled it
7 in all the other depositions in this case.

8 MR. ROBERTS: I'll move on for now
9 and we can deal with that.

10 BY MR. ROBERTS:

11 Q. Mr. Cupit, under the decommissioning
12 agreement itself, if Fieldwood does not perform its
13 decommissioning obligations, then Apache has the
14 right to perform those decommissioning obligations
15 if the government demands that such decommissioning
16 obligations be performed?

17 A. There are very specific terms with regard
18 to which parties perform and when they have the
19 right to perform and I will defer to the terms of
20 the decommissioning agreement as they spell that
21 out.

22 Q. Well, you're familiar with the
23 decommissioning agreement now, right?

24 A. I am.

25 Q. Okay. And so you tell me your

1 understanding at what point Apache can step in and
2 perform the decommissioning?

3 A. Well, again, the decommissioning
4 agreement spells out very specific terms as to when
5 Apache can do that.

6 Q. Well, what is your understanding of those
7 terms?

8 A. My understanding is what the
9 decommissioning agreement says.

10 Q. So you're going to answer my question by
11 reading the decommissioning agreement and we're
12 going to take all day?

13 A. If you'd like.

14 Q. And we're going to take all day because
15 you're not going to discuss the decommissioning
16 agreement?

17 A. No, I'm going to discuss the terms of the
18 decommissioning agreement. It says what it says.

19 Q. Do you have that?

20 A. I have a copy of the decommissioning
21 agreement.

22 Q. Would you look at paragraph 2.1(a).
23 While you're pulling that up, let me ask you a
24 question. Is it Apache's position that Fieldwood is
25 currently in default under the decommissioning

1 agreement or not?

2 A. We have --

3 MR. MORFEY: Hold on one second.

4 Hold on one second, Brett.

5 I'm going to object, it's outside the
6 scope of today's deposition.

7 You can go ahead and answer.

8 A. We have filed claims with regard to their
9 performance or maybe lack of performance under the
10 decommissioning agreement.

11 BY MR. ROBERTS:

12 Q. And are those claims based upon Apache's
13 contention that Fieldwood has not abided by its
14 obligations under the decommissioning agreement?

15 A. In part, yes.

16 Q. And under 2.1, generally speaking,
17 Fieldwood was required to spend \$80 million a year
18 in 2019 and 2020 on decommissioning, correct?

19 A. In each of those years, yes.

20 Q. And it did not do so?

21 A. My understanding is in 2019, it did not
22 do so.

23 Q. Did it do so in 2020?

24 A. Or I'm sorry, in 2020 it did not do so.
25 It did in 2019.

1 Q. Thank you. Do you know how far it fell
2 short in 2020?

3 A. I don't remember the number.

4 Q. Would it be around \$45 million?

5 A. I couldn't hear that.

6 Q. Would it be around \$45 million?

7 A. That sounds similar to what I remember.

8 Q. Okay. Thank you. It's true under the
9 decommissioning agreement, at least prior to the
10 bankruptcy, that if Apache undertook
11 decommissioning, it could seek reimbursement from
12 Fieldwood for the costs it incurred, correct?

13 A. If that's what the decommissioning
14 agreement says, yeah.

15 Q. And it could also, generally speaking
16 again, look to other sources of security that were
17 set up, for example, letters of credit and surety
18 bonds for reimbursement, correct?

19 A. If that's what the decommissioning
20 agreement says, then, yes.

21 Q. Do you recall whether or not Apache has
22 recourse to letters of credit or surety bonds in the
23 event that --

24 A. Apache has recourse against security
25 under the decommissioning agreement.

1 Q. Thank you. And before the bankruptcy,
2 the right -- as a result of the bankruptcy, Apache's
3 right to reimbursement from Fieldwood would be an
4 unsecured claim in the bankruptcy case, right?

5 MR. MORFEY: Objection, legal
6 conclusion.

7 You can answer to the extent you
8 know, Brett.

9 A. I'll rely on legal counsel to advise on
10 that.

11 BY MR. ROBERTS:

12 Q. Do you know the difference between a
13 secured and an unsecured claim, Mr. Cupit? You are
14 a licensed attorney after all.

15 A. Generally, yes.

16 Q. And does Apache, under the
17 decommissioning agreement or any other agreement,
18 have collateral to secure Fieldwood's obligation to
19 reimburse it for decommissioning costs?

20 A. I guess it depends on how you define
21 collateral.

22 Q. How would you define collateral?

23 A. I don't know how I would define
24 collateral. You're the one that used the word.

25 Q. Let's call it a security interest in

1 assets. Fair enough?

2 A. Yeah, I don't believe there's a security
3 interest in assets.

4 Q. So then the claim, if any, that Apache
5 would have under the decommissioning agreement
6 against Fieldwood would be an unsecured claim, not a
7 secured claim, correct?

8 MR. MORFEY: Objection. Hold on.
9 Objection, legal conclusion.

10 You can answer.

11 A. I'll rely on my counsel's objection.

12 BY MR. ROBERTS:

13 Q. What does that mean? You don't know the
14 answer?

15 A. Meaning that you're asking me for -- to
16 provide legal advice to you.

17 Q. No, I'm not. I'm asking you what your
18 answer is to the question, if you know the answer.
19 I'm not relying on your advice.

20 MR. MORFEY: Hold on a second, guys.
21 So it sounds like he's re-asking the question or
22 asking you to answer the question. So I'm going to
23 renew any objection that this is -- calls for a
24 legal conclusion.

25 MR. ROBERTS: The witness can answer

1 the question subject to your objection, correct?

2 MR. MORFEY: My objection is that it
3 is a legal conclusion. I'm not instructing him to
4 answer. I will, however, advise the witness that he
5 should not disclose any information that is subject
6 to the attorney-client privilege.

7 MR. ROBERTS: What does that advice
8 have to do with the question I asked? Was I asking
9 for privileged information?

10 MR. MORFEY: You've asked him for, in
11 my opinion, Steve, and respectfully, clearly a legal
12 conclusion. And he's not here to testify as a legal
13 expert.

14 Now, Mr. Cupit also, as we've
15 covered, is an in-house attorney for Apache. And my
16 guess is that various legal matters are discussed
17 subject to the privilege in his job duties. And so
18 we've got a complicated issue here. I think you've
19 asked a legal conclusion and I think it probably
20 calls for privileged information as well.

21 BY MR. ROBERTS:

22 Q. Let me ask this question. I think you've
23 answered, but I want to make sure the record's
24 clear. To your knowledge, Apache does not have any
25 collateral to secure any claim it has against

1 Fieldwood under the decommissioning agreement.

2 True?

3 A. Repeat that again.

4 Q. To your knowledge, Apache does not have
5 any collateral or security interest in assets at
6 Fieldwood to secure any claim it has against
7 Fieldwood under the decommissioning agreement?

8 MR. MORFEY: And I'm going to object
9 to that question as also calls -- calling for a
10 legal conclusion and would caution the witness not
11 to disclose information that is subject to the
12 attorney-client privilege.

13 MR. ROBERTS: I'm asking him for his
14 understanding. He can -- if he's a corporate
15 representative, he can tell us his understanding as
16 a corporate representative.

17 MR. MORFEY: This information --

18 MR. ROBERTS: You don't have to be a
19 lawyer to understand. I've already explained what
20 security interest is. This witness has the factual
21 information to answer the question.

22 MR. MORFEY: And --

23 MR. ROBERTS: Are you going to
24 continue the objection and instruct him not to
25 answer?

1 MR. MORFEY: I didn't instruct him
2 not to answer. I instructed him not to go into
3 privileged information, and I'm renewing my
4 objection that it calls for a legal conclusion. And
5 I would also say that the characterization of
6 Apache's claims in the bankruptcy are not within the
7 scope of this deposition. They're not part of the
8 topics, whether it's claims or deemed secured or
9 unsecured or anything else.

10 MR. ROBERTS: As to that -- well,
11 it's for purposes of background, but I'll move on
12 and I'll back into it.

13 BY MR. ROBERTS:

14 Q. Mr. Cupit, isn't it true that under the
15 agreements that Apache has reached with Fieldwood,
16 under Fieldwood's proposed plan, that Apache has
17 greater rights to protect its interests than it did
18 before the plan?

19 MR. MORFEY: Objection, vague.

20 A. I don't know that I would characterize
21 anything as greater rights.

22 BY MR. ROBERTS:

23 Q. So under the plan, an entity called
24 Fieldwood I LLC is being created, correct?

25 A. Yes.

1 Q. And Fieldwood I will have a sole manager
2 and no employees, correct?

3 A. That's correct.

4 Q. And that sole manager is Jon Graham,
5 right?

6 A. Fieldwood I has not been formed yet, so
7 Jon Graham is not currently the sole manager of that
8 entity.

9 Q. No, Jon Graham is currently a consultant
10 for Fieldwood, correct?

11 A. That is correct.

12 Q. And it is intended that he will be the
13 sole manager for Fieldwood I when it is formed,
14 correct?

15 A. That is the expectation.

16 Q. And that's with the approval of Apache,
17 correct?

18 A. That's correct.

19 Q. And he cannot be removed absent gross
20 negligence or willful misconduct, without Apache's
21 approval or consent, correct?

22 A. If that's what the LLC agreement says,
23 then yes.

24 Q. Okay. And you -- Apache did not have any
25 such rights -- doesn't have any such right now prior

1 to confirmation of the plan, does it?

2 A. To remove -- to consent to the removal of
3 a sole manager?

4 Q. Right. Let me back up. Let me set this
5 up a little bit better.

6 The purpose of FWE I is to operate what
7 is called the Apache legacy assets and perform the
8 decommissioning of those assets. That's the purpose
9 of the formation of FWE I, correct?

10 A. It is to own, operate, manage and
11 decommission the properties that will be allocated
12 to Fieldwood I.

13 Q. And those properties are properties that
14 Fieldwood I acquired from Apache?

15 A. That's correct.

16 Q. So prior to the plan being confirmed,
17 those obligations would be the obligations of the
18 existing Fieldwood, correct?

19 MR. MORFEY: Objection, legal
20 conclusion.

21 A. Fieldwood Energy LLC is currently
22 obligated to decommission those properties.

23 BY MR. ROBERTS:

24 Q. And Apache doesn't have any right under
25 any agreement that you know of to determine who the

1 managers of Fieldwood Energy LLC are, correct?

2 A. I'm not aware of any.

3 MR. MORFEY: Objection.

4 BY MR. ROBERTS:

5 Q. Fieldwood -- I'm going to call it FWE I,
6 is also going to have an independent director,
7 correct?

8 A. That's correct.

9 Q. To your knowledge, has Apache consented
10 to an individual -- approved a particular individual
11 to become the independent director of FWE I?

12 A. Not to my knowledge.

13 Q. But that independent director must be
14 approved by Apache, correct?

15 A. If that's what the LLC agreement says,
16 then yes.

17 Q. All right. And prior to the plan being
18 confirmed, Apache didn't have any rights to approve
19 an independent director of Fieldwood Energy LLC
20 under any agreement that you're aware of, correct?

21 A. I'm not aware if that's true.

22 Q. Fieldwood I is not going to have any
23 employees other than the sole manager, correct?

24 A. That's what the LLC agreement says.

25 Q. Right. And the -- so the decommissioning

1 work, as I understand it, is going to be first --
2 well, after the transition is completed as provided
3 by the agreements, there will be a service provider
4 that is hired to do the actual work, right?

5 A. Eventually maybe, yes.

6 Q. Okay. And that service provider has to
7 be approved by Apache unless it's the current credit
8 bid purchaser, correct?

9 A. I'll rely on the terms of the LLC as to
10 those consent rights.

11 Q. If it says that, you don't have any
12 reason to disagree that?

13 A. I mean, it says what it says.

14 Q. All right. So before the plan was
15 confirmed, Apache didn't have any right to approve
16 the service providers of Fieldwood Energy LLC, did
17 it?

18 A. I'm not aware of such a right.

19 Q. The operations of FWE I are limited to
20 the decommissioning of the legacy Apache properties
21 unless Apache consents to run those operations; is
22 that right?

23 A. Repeat your question.

24 Q. The operations of FWE I are limited to
25 the P&A and decommissioning of the legacy Apache

1 properties unless Apache consents, correct?

2 MR. MORFEY: Brett, hold on. Hold on
3 one moment. I want to lodge an objection.

4 Steve, I've let you ask some
5 questions along these lines, but the operations of
6 Fieldwood I are not one of our topics here today.
7 And so we're straying far afield of what our witness
8 is here to testify on, I'm afraid.

9 MR. ROBERTS: I'm sorry, it's under
10 No. 4, post confirmation operations and plans at
11 Apache with respect to all agreements to which
12 Apache's a party or to which Apache will be a party
13 under the plan of reorganization with respect to any
14 rights granted to Apache under plan of
15 reorganization. And I'm asking about an agreement
16 to which it is a party.

17 MR. MORFEY: You're asking about --
18 you're asking about the LLC agreement for
19 Fieldwood I.

20 MR. ROBERTS: I'm asking about
21 Apache's consent rights.

22 BY MR. ROBERTS:

23 Q. So let me ask you this. Mr. Cupit, were
24 you involved in negotiating Apache's consent rights
25 in the FWE I LLC agreement?

1 A. Yes.

2 MR. ROBERTS: That's what I'm asking
3 about, Counsel. Are you still telling me I'm
4 outside the scope of item 4?

5 MR. MORFEY: The operations of
6 Fieldwood I, I believe are outside the scope.

7 MR. ROBERTS: But Apache has consent
8 rights under the Fieldwood I LLC, correct?

9 MR. MORFEY: Are you asking -- I'm
10 sorry, I didn't know if you were asking me, Steve,
11 or asking the witness.

12 MR. ROBERTS: I'm trying to
13 understand your objection, why you're saying this is
14 outside the scope, when Apache has negotiated
15 consent rights over FWE I LLC and you're telling me
16 that's outside the scope of the post confirmation
17 operations and plans of Apache?

18 MR. MORFEY: My objection is very
19 clear and that is, I've let you ask several
20 questions about the operations of Fieldwood I and
21 you seem to continue to go into that. And so I'm
22 objecting that those questions are outside the scope
23 of the deposition topics.

24 MR. ROBERTS: To be specific, I'm
25 asking about Apache's consent rights to the

1 operation of Fieldwood I.

2 MR. MORFEY: And so please just ask
3 your question. I haven't instructed the witness not
4 to answer. Ask your question and he can respond and
5 I'll object as appropriate.

6 MR. ROBERTS: All right.

7 BY MR. ROBERTS:

8 Q. Mr. Cupit, do you have the Fieldwood I
9 draft LLC agreement?

10 A. I do not have it in front of me.

11 Q. So isn't it true that Fieldwood I cannot
12 select, remove or change the responsibilities of a
13 service provider except for gross negligence or
14 willful misconduct? If that's what the agreement
15 says, you don't have any reason to disagree with
16 that, right?

17 A. I'll rely on what the agreement says.

18 Q. Okay. So prior to the confirmations of
19 the plan, Apache didn't have any right to select
20 Fieldwood I Energy LLC's service provider, correct?

21 A. I'm not aware of such a right.

22 Q. So what is the purpose to Apache of
23 having these additional rights that it did not have?
24 What is the goal and the purpose of Apache to
25 negotiate these consent rights?

1 A. At the end of the day, it's to see these
2 properties decommissioned.

3 Q. It's to -- wouldn't it be fair to say
4 it's to limit or eliminate Apache's potential
5 exposure for decommissioning costs?

6 A. At the end of the day, yes.

7 Q. Has Apache done any confirmations on its
8 potential exposure on the decommissioning costs?

9 A. We have -- some calculations have been
10 done, yes.

11 Q. Do you have -- can you tell me any
12 estimates of range of estimates of Apache's
13 exposure?

14 MR. MORFEY: And I'm going to caution
15 the witness to the extent that this is revealing of
16 attorney-client communications or work product or
17 similar privileged issues, then obviously we don't
18 want to get into those matters. To the extent it
19 doesn't, you can respond.

20 A. The only information that we have -- we
21 have prepared or had prepared was in anticipation of
22 litigation subject to privilege.

23 BY MR. ROBERTS:

24 Q. So Mr. Jon Graham testified yesterday,
25 and I will represent to you he estimated

1 decommissioning costs that Fieldwood has estimated
2 to have been anywhere between 800 million to
3 \$1.2 billion. Do you have any reason to disagree
4 with that range of estimates?

5 A. If that's what Jon testified, I have no
6 reason to disagree with him.

7 Q. And if he were true, that would mean if
8 Fieldwood did not perform its decommissioning
9 obligation, Apache would have exposure above and
10 beyond the third-party letters of credit and
11 sureties that protect Apache's interests, correct?

12 A. That would seem possible.

13 Q. Do you know approximately how much money
14 there is in Trust A currently?

15 A. My understanding, it's around 230 million
16 something.

17 Q. And is Apache loaning an additional
18 \$45 million to be deposited in Trust A?

19 A. There is a -- well, I mean, the standby
20 facilities sets forth what Apache's willing to loan.

21 Q. Well, I looked at the standby facility,
22 but the debtor's plan as I recall -- well, let me --
23 instead of going to that, is Apache intending to
24 make a \$45 million advance under that facility?

25 A. Apache intends to -- assuming that that

1 agreement is executed, Apache intends to comply with
2 the agreement.

3 Q. Well, you have -- Apache has the
4 discretion whether to loan money under the
5 agreement, correct?

6 A. I mean, the agreement speaks for itself
7 as to what Apache's obligations and discretion are.

8 Q. Well, Apache doesn't have any obligation
9 to loan any money under the agreement, right?

10 A. Apache -- again, the agreement says what
11 it says as to what our obligations and rights are.

12 Q. Do you disagree with the statement that
13 Apache has no obligation to loan any funds under the
14 agreement?

15 A. I again refer to the agreement and it
16 says what it says.

17 Q. Are you familiar with the agreement?

18 A. Generally, yes.

19 Q. Are you aware of any term in that
20 agreement where Apache is obligated to fund any
21 money under the standby letter of credit -- under
22 the --

23 A. The agreement says what it says.

24 Q. So you're not aware one way or another?

25 A. I'm just saying that the agreement will

1 set forth the terms of what Apache's obligations
2 are.

3 Q. I understand that. I'm asking for your
4 understanding. I'm not asking what the agreement
5 says. I'm asking you --

6 A. My understanding is the agreement sets
7 forth the terms.

8 Q. Yes. And you don't have any
9 understanding what those terms are?

10 A. It sets forth what obligations Apache has
11 to lend money.

12 Q. And can you point to anywhere in that
13 agreement where Apache has the affirmative
14 obligation to loan any money?

15 A. Again, the agreement says what it says.

16 Q. No, I'm asking you if you can point to
17 anywhere in the agreement where --

18 A. I do not have a section referenced to
19 anything in the agreement off the top of my head.

20 Q. So is Apache intending to loan
21 \$45 million to Fieldwood, FWE I, when the plan's
22 confirmed?

23 MR. MORFEY: Objection, asked and
24 answered.

25 A. If the facility agreement says that we

1 will loan money, then we'll agree to loan money.

2 BY MR. ROBERTS:

3 Q. Well, I tell you, the facility agreement
4 doesn't say it, but that doesn't -- that's not my
5 question. My question is whether Apache intends to
6 loan \$45 million upon confirmation of the plan for
7 deposit into Trust A?

8 MR. MORFEY: Objection.

9 A. We intend to comply with that agreement.

10 MR. MORFEY: And objection, asked and
11 answered.

12 BY MR. ROBERTS:

13 Q. The agreement does not address that
14 question. So if the agreement doesn't address the
15 question, how do you answer it?

16 MR. MORFEY: Same objection.

17 A. If the agreement contemplates that there
18 is a loan to be made and a loan request is made --
19 is received, we will comply with the agreement.

20 BY MR. ROBERTS:

21 Q. Has a loan request been made?

22 A. The agreement doesn't exist yet.

23 Q. Right. And if the debtor's plan
24 states -- debtor's disclosure statement states that
25 Apache loan \$45 million upon confirmation of the

1 plan, that's something that you have no knowledge
2 of?

3 A. If that's what it says, then that's what
4 we'll do.

5 Q. So do you know approximately at what
6 level of cost Apache -- well, do you know the total
7 of Trust A letters of credit and surety bonds that
8 protect Apache in the decommissioning agreement, the
9 approximate level?

10 A. My rough memory of the total of the
11 Trust A balance of the cash, the security -- the
12 surety bonds and the LLC agreements comes to 730 or
13 40 million.

14 Q. Correct. So does Apache have any
15 financial incentive to manage or control
16 decommissioning costs so long as they're below the
17 \$730 million threshold?

18 A. I can see scenarios under which they
19 would.

20 Q. Give me an example.

21 A. Well, I mean, you're projecting a lot of
22 time into the future.

23 Q. Yes.

24 A. And while estimates may be low at one
25 point in time, it may not be tomorrow.

1 Q. Correct. So it would be fair to say
2 that --

3 A. There's always an incentive to control
4 costs.

5 Q. I'm sorry?

6 A. There's always an incentive to control
7 costs.

8 Q. Was there an incentive to control costs
9 if the costs are not expected to exceed funds that
10 Apache can obtain from third parties for
11 reimbursement?

12 A. I'm not sure I understand your question.

13 Q. Well, under the decommissioning agreement
14 there's certain conditions in which Apache can draw
15 on Trust A, draw on letter of credit, draw on surety
16 bonds to reimburse its costs. Fair enough?

17 A. Okay.

18 Q. And until those funds run out, Apache's
19 not at financial risk for the decommissioning,
20 correct?

21 A. I wouldn't characterize it that way.

22 Q. Okay. How would -- why do you disagree
23 with that?

24 A. Well, just because those -- that amount
25 of money is not being consumed yet doesn't mean that

1 there's not a risk coming down the line.

2 Q. Correct. So under the standby loan
3 agreement and the security agreement, generally
4 speaking, if Apache loans money under that standby
5 loan agreement, that loan will be secured by a lien
6 on the assets at Fieldwood I, correct?

7 A. There is a lien to secure loans under the
8 standby facility, yes.

9 Q. And so if Apache were to loan money to
10 Fieldwood in order for Fieldwood to comply with its
11 decommissioning obligations, Fieldwood's obligation
12 to repay that loan would be secured by its assets?

13 MR. MORFEY: Objection, legal
14 conclusion.

15 You can answer.

16 A. I'll rely on what the agreements say, but
17 there are security documents associated with the
18 standby facility.

19 BY MR. ROBERTS:

20 Q. Okay. We've already established that
21 prior to the bankruptcy, Apache didn't have any
22 security interest in assets of Fieldwood to secure
23 any obligations prior to the bankruptcy, correct?

24 A. You've stated that.

25 Q. Do you agree with it or not?

1 A. Well, I think we've gotten into a back
2 and forth over that.

3 Q. I think you said you're not aware of any
4 security interests.

5 A. I'm not aware of any current mortgages.

6 Q. So that's an advantage to Apache that it
7 has under the plan that it can use going forward
8 that it did not have prior to the plan, correct?

9 A. Well, in like manner, we didn't have an
10 obligation to loan money.

11 Q. Right. So one thing I'm really -- I'm
12 really curious about is, Fieldwood is currently
13 producing revenue from production, right?

14 A. That's my understanding.

15 Q. All right. Under the decommissioning
16 agreement as it stands now, if Fieldwood did not
17 abide by its obligation to decommission and Apache's
18 obligation was triggered, Apache wouldn't have the
19 right to use Fieldwood's funds production, would it?

20 MR. MORFEY: Objection, legal
21 conclusion, hypothetical and beyond the scope.

22 You can answer.

23 MR. ROBERTS: Let me --

24 A. The decommissioning -- go ahead.

25

1 BY MR. ROBERTS:

2 Q. Let me re-ask the question. Going
3 forward, isn't it true that the debtor's own
4 projections show that Fieldwood does not have the
5 funds in the future to perform all of its projected
6 decommissioning obligations?

7 A. My understanding is that Fieldwood's
8 forecasts have indicated that they will likely not
9 perform some portion.

10 Q. And what are the consequences to Apache
11 if Fieldwood doesn't perform?

12 A. I'm sure they're myriad.

13 Q. So one is Apache could pick up that
14 obligation and be required to fund the
15 decommissioning obligations, could be required by
16 the government to do so?

17 A. That's a possibility.

18 Q. All right. And if -- if that happened
19 and if Apache, say, drew on the letter of credit to
20 reimburse it -- no, strike that.

21 If Apache has to pick up that obligation,
22 does Apache have any right to use the revenues that
23 Fieldwood continues to produce to defray its
24 obligation?

25 MR. MORFEY: Objection, legal

1 conclusion and hypothetical.

2 MR. ROBERTS: We've already
3 established the hypothetical, that it's likely that
4 Fieldwood will not be able to perform its
5 decommissioning obligations.

6 BY MR. ROBERTS:

7 Q. So my question is, if Apache is required
8 to, is there a way in which Apache has -- can use
9 Fieldwood's revenues that it still generates to --

10 MR. MORFEY: Same objection.

11 BY MR. ROBERTS:

12 Q. -- perform to Fieldwood, right?

13 A. The decommissioning agreement outlines
14 what rights we have vis-a-vis Fieldwood with respect
15 to decommissioning that Apache may have to perform.

16 Q. Which would be reimbursement rights,
17 correct? You've got a right to reimbursement?

18 A. Among others, yes.

19 Q. So would it be fair to say that Apache is
20 attempting to limit its exposure to decommissioning
21 costs by entering into the planned support agreement
22 and supporting the debtor's plan?

23 A. That has been an objective from Apache
24 since 2013.

25 Q. And isn't it true -- well, what does the

1 term decommissioning security mean to you in the
2 context of these agreements?

3 A. Well, I don't remember specifically if
4 the decommissioning agreement defines that, but if
5 it is, then it would be what's defined in the
6 agreement.

7 Q. Well, it would generally be the bonds and
8 the letter of credit, where you -- that Apache could
9 seek reimbursement from, correct?

10 A. Those are part of it, yes.

11 Q. And Apache is requiring that security be
12 maintained as a condition of the agreement --
13 entering into these agreements, correct?

14 A. That is a condition of the restructuring
15 support agreement.

16 Q. Give me one minute. Excuse me. So let
17 me ask you this. If in the future Fieldwood did not
18 live up to its decommissioning obligations, Apache
19 stepped in, performed those obligations and the cost
20 exceeded Trust A letters of credit and surety bonds,
21 then Apache at that point would have to come out of
22 pocket to continue the decommissioning agreement
23 unless it loaned money to Fieldwood, right?

24 A. Can you rephrase your question, restate
25 your question?

1 Q. Yeah. Let's -- here's my hypothetical.
2 Fieldwood defaults in its decommissioning
3 obligations, Apache steps up and undertakes its
4 decommissioning obligations, it exercises its right
5 to recourse under Trust A, it exercises its right to
6 let any letters of credit, it exercises its right to
7 any surety bonds, and all those sources of money run
8 out, but the decommissioning obligations continue.
9 At that the point, Apache is exposed to pay for
10 continuing decommissioning obligations out of its
11 own pocket, correct?

12 A. I think all along Apache is paying out of
13 its own pocket subject to reimbursement rights.

14 Q. Right. So it would then only have
15 reimbursement rights against Fieldwood because its
16 reimbursement rights under my hypothetical against
17 all the other parties would have been exhausted. So
18 it would have reimbursement rights against
19 Fieldwood, correct?

20 MR. MORFEY: Objection, legal
21 conclusion and hypothetical.

22 A. We have the rights set forth in the
23 decommissioning agreement.

24 BY MR. ROBERTS:

25 Q. So Apache could either pay those costs

1 and seek reimbursement or it could loan money to
2 Fieldwood and Fieldwood could pay those costs and
3 Apache would have a first lien on Fieldwood's assets
4 to repay that loan, right?

5 MR. MORFEY: Same objections.

6 A. So I believe you're referencing Fieldwood
7 in reference to Fieldwood Energy I --

8 BY MR. ROBERTS:

9 Q. Yes.

10 A. -- post confirmation.

11 Q. Yes.

12 A. And in that regard, the -- Apache's -- if
13 Apache's ordered to perform decommissioning, then
14 Apache expects to comply with its obligations.

15 Q. Correct. And once Apache has gotten
16 reimbursement from all other sources other than
17 Fieldwood and exhausted those resources, then its
18 only other recourse would be against Fieldwood to
19 get reimbursement for those costs, right?

20 MR. MORFEY: Same objection.

21 A. The decommissioning agreement says what
22 it says, as far as what our rights on reimbursement
23 are.

24 BY MR. ROBERTS:

25 Q. So do you disagree with my -- if my

1 statement is, if you've exhausted all your other
2 recourse against other sources, the only source of
3 your right of reimbursement would be Fieldwood I?

4 MR. MORFEY: Same objections, and
5 asked and answered.

6 MR. ROBERTS: I don't think it's been
7 answered.

8 A. The decommissioning agreement spells out
9 what rights we have for reimbursement.

10 BY MR. ROBERTS:

11 Q. And I told you what I thought the
12 decommissioning agreement said and I'm asking you
13 whether that's your understanding or not.

14 A. But I'm telling you that the
15 decommissioning spells it out.

16 Q. I understand --

17 A. That agreement spells out --

18 Q. I understand it spells it out. I'm
19 asking for your understanding. You're familiar with
20 decommissioning --

21 A. My understanding is that the
22 decommissioning agreement spells out what the
23 obligations and rights of reimbursement are.

24 Q. So let me ask it this way. Once Apache
25 has exhausted recourse to all other sources other

1 than Fieldwood and it's still paying for
2 decommissioning agreements, it has a choice to
3 either pay for those or loan the money to Fieldwood
4 for Fieldwood to pay for them under the secured line
5 of credit?

6 MR. MORFEY: Same objections, asked
7 and answered.

8 MR. ROBERTS: It's not a question
9 about the decommissioning agreement.

10 BY MR. ROBERTS:

11 Q. I'm asking you what your choices are.
12 Your choices are either to pay for it or loan the
13 money and have Fieldwood pay for it under my
14 hypothetical, correct?

15 A. Well, the standby facility specifies when
16 we have rights and obligations to loan money. If we
17 have an obligation to perform decommissioning, then
18 we intend to comply with whatever our obligations
19 are.

20 Q. And you can comply with those obligations
21 either by spending the money yourself, Apache, or
22 those obligations could be satisfied by Apache
23 choosing to loan money to Fieldwood for Fieldwood to
24 satisfy those obligations, right?

25 A. I mean, the standby facility sets forth

1 the terms under which loans are to be made.

2 Q. Right. But you don't have to make the
3 loan, right? You can --

4 A. The standby facility sets out what the
5 conditions of those loans are.

6 Q. And there's nothing in that that you can
7 point me to that tells me that Fieldwood has to
8 make -- excuse me, that Apache has to make a loan to
9 Fieldwood?

10 A. The standby facility sets out what
11 Apache's obligations to loan money are.

12 Q. Well, show me in the agreement where
13 there is any obligation from Fieldwood -- excuse me,
14 by Apache to make the loan --

15 A. I'll refer you to the standby facility.

16 Q. I want you to show me, because I can't
17 find it. So you're referring me to something that I
18 can't find and you're telling me it speaks for
19 itself, but it's not speaking.

20 MR. MORFEY: Hold on.

21 BY MR. ROBERTS:

22 Q. So my question is, where in that
23 agreement does it address -- is there a requirement
24 by Apache to loan money to Fieldwood?

25 MR. MORFEY: So let me jump in here

1 for a second, guys. Steve, you're obviously welcome
2 to ask him about these agreements, but if you want
3 him to point you to a specific spot in an agreement,
4 then you need to provide that agreement to him so he
5 has that opportunity.

6 BY MR. ROBERTS:

7 Q. Do you have the standby loan agreement?

8 A. Not in front of me, no.

9 Q. What is your e-mail address and I will
10 send it to you?

11 A. Brett.

12 MR. MORFEY: And, Steve, I'd ask for
13 you to send it to me as well, please.

14 MR. ROBERTS: I will. Just one
15 second.

16 BY MR. ROBERTS:

17 Q. Confirming, brettcupit@apachecorp.com?

18 A. Correct.

19 Q. What I'm e-mailing you is the standby
20 loan agreement draft filed under Docket No. 1365 on
21 May 11th, 2021. Let me know when you receive that.
22 I'm sorry, was it brett.cupit?

23 A. That's correct.

24 MR. ROBERTS: Have either one of you
25 received it yet?

1 THE WITNESS: I have not.

2 MR. MORFEY: Yeah, me neither.

3 MR. ROBERTS: Let's take a ten-minute
4 break and let's see if I can get that document to
5 you.

6 During the break, I would ask you to
7 look through the agreement if you get it so you can
8 point to a -- any provision that requires Apache to
9 loan any funds to FWE I under this agreement. So
10 take a -- it is now 11:02. Let's meet back up at
11 11:10 and for the benefit of the parties, I'm almost
12 finished.

13 MR. MORFEY: All right. Thank you.

14 (Recess taken from 11:02 a.m. to
15 11:13 a.m.)

16 MR. ROBERTS: I just have a few more
17 questions.

18 BY MR. ROBERTS:

19 Q. Did you get the standby loan agreement
20 draft that I e-mailed you, Mr. Cupit?

21 A. I did.

22 Q. Can you point to me in that agreement
23 where Apache is obligated to loan money to
24 Fieldwood?

25 A. I believe Article II of that loan

1 agreement sets forth the terms and conditions under
2 which loans are to be made.

3 Q. Okay. Let's go to Article II. And where
4 in Article II does it say that Apache shall make a
5 loan?

6 A. Well, again, Article II sets forth the
7 terms under which Apache is to provide loans to
8 Fieldwood I.

9 Q. What is --

10 A. And I will rely upon that agreement to
11 say what it says.

12 Q. I want you to point out to me where in
13 that agreement it says that Apache is obligated to
14 make a loan --

15 A. And I pointed out Article II --

16 Q. -- and you can quote the specific
17 language. You don't have to paraphrase it.

18 A. I'm -- what I'm telling you is that the
19 agreement says -- sets forth the terms under which
20 Apache is to make loans.

21 Q. Yes. And where in those terms is --

22 (Simultaneous discussion interrupted
23 by reporter.)

24 BY MR. ROBERTS:

25 Q. Where in that Section 2 does it say

1 Apache is obligated to make a loan? Read the
2 language to me.

3 A. Any interpretation of this language is
4 subject to my attorney-client privilege.

5 Q. I'm not asking for an interpretation.
6 I'm asking you to read it.

7 A. But you are.

8 Q. So in other words, you can't point that
9 out to me, can you?

10 A. I can tell you that the agreement sets
11 forth the terms under which Apache makes loans.

12 Q. Excuse me one second. Would you turn to
13 Section 4.02 entitled Each Credit Event.

14 A. Okay.

15 Q. And is it true that under 4.02(c), The
16 obligation of the Lender to make each loan under
17 Article II is subject to: All amounts in the
18 Trust A Account, the Letters of Credit and the
19 Permitted Surety Bonds have been fully exhausted or
20 are not available to pay or reimburse Lender for
21 Decommissioning?

22 Did I read that correctly?

23 A. It looks like you did.

24 Q. So at least you agree with me under that
25 term, that Apache has no obligation to make the loan

1 under Article II until Apache has exhausted those
2 items in paragraph 4.2(c), correct?

3 A. I agree that you read 4.2(c) correctly.

4 Q. You agree I just stated it -- that's what
5 the agreement says. Do you have any reason to
6 disagree with the statement I just made?

7 A. I'm not sure. Repeat your statement.

8 Q. The statement I made is, there's no
9 obligation from Apache -- by Apache to make the loan
10 under Article II until Trust A account letters of
11 credit and permitted surety bonds have been fully
12 exhausted, correct?

13 MR. MORFEY: Objection.

14 THE REPORTER: Repeat that objection.

15 A. And I agree that 4.2(c) reads that: All
16 amounts in the Trust A Account, the Letters of
17 Credit and the Permitted Surety Bonds have been
18 fully exhausted and -- or are not available to pay
19 or reimburse Lender for Decommissioning.

20 BY MR. ROBERTS:

21 Q. And has Apache done any type of
22 projections on estimates of when those items in
23 4.2(c) may be exhausted?

24 A. Any such projections would have been done
25 in anticipation of litigation and subject to

1 privilege.

2 Q. So you'd agree with me that when the
3 plan -- on the date the plan is confirmed, Apache
4 has no obligation to loan any money under Article II
5 to Apache as of that date -- excuse me, to
6 Fieldwood I as of that date?

7 MR. MORFEY: Objection, legal
8 conclusion.

9 A. The agreement sets forth the terms and
10 conditions under which we're going to make loans.

11 BY MR. ROBERTS:

12 Q. Mr. Cupit, are you going to be available
13 to testify at the confirmation hearing?

14 A. I have not been asked to do so as yet.

15 MR. ROBERTS: Pass the witness.

16 Everybody still there?

17 MR. EISENBERG: Anybody else want the
18 go? I'll go.

19 MR. ROBERTS: Yeah. Sorry. You-all
20 disappeared on me for a minute. Go ahead.

21 MR. EISENBERG: Does anybody else
22 want to go first? It's fine by me. All right.

23 Thank you very much.

24

25

1 EXAMINATION

2 BY MR. EISENBERG:

3 Q. Mr. Cupit, my name is Phil Eisenberg. I
4 represent HCCI International, which is a surety
5 company. How are you today?

6 A. I'm well. And you?

7 Q. Good. I think we might have skipped a
8 few things. What is your business address, sir?

9 A. 2000 Post Oak, Suite 100, Houston, Texas
10 77056.

11 Q. And your home address, sir?

12 A. 2706 Wild Canary, Richmond, Texas 77406.

13 Q. Thank you very much. I appreciate that.
14 And what did you do to prepare for today's 30(b)(6)
15 deposition?

16 A. I've met with counsel at HAK and in-house
17 and then otherwise I've been working on these
18 documents and the associated restructuring for over
19 a year.

20 Q. Did you -- so you didn't independently,
21 in preparation for today's deposition, speak to any
22 of the business people at Apache to get their
23 understanding of the topics and the subject matters
24 that were presented?

25 A. I have not.

1 Q. And did you review the documentation
2 itself prior to coming here today?

3 A. Other than my normal review in the course
4 of drafting, negotiating and reviewing them
5 throughout the last year, no.

6 Q. I appreciate your candor in that. We
7 spoke to Mr. Graham yesterday. Do you know who
8 Mr. Graham is?

9 A. I know Jon Graham.

10 Q. And do you know him from your work at
11 Apache prior to him being hired as a consultant by
12 Fieldwood?

13 A. That's where I first met him, yes.

14 Q. When did you first meet Mr. Graham?

15 A. I couldn't give you an exact year, but
16 during the course of my employment at Apache.

17 Q. Okay. Did you ever work overseas or no?

18 A. I have not.

19 Q. And did you work with him when he was
20 the -- I guess the -- he was in charge of HSS&E at
21 Apache. Is that -- did you have business dealings
22 with him at that point in time?

23 A. I did.

24 Q. On a regular basis?

25 A. I wouldn't say regular.

1 Q. You ever go to lunch with the guy?

2 A. Not that I can recall.

3 Q. Okay. No worries. Did you work on HSS&E
4 matters as counsel for Apache?

5 A. From time to time.

6 Q. And from -- would you -- would Mr. Graham
7 have been your client at that point?

8 A. On occasion.

9 Q. And it's true, isn't it, Mr. Cupit, that
10 on a weekly basis you've been having calls with
11 folks at Fieldwood, including Mr. Graham over the
12 last four or five months?

13 A. That is not true.

14 Q. That is not true. Okay. What's not true
15 about it?

16 A. I have not been involved in weekly calls.

17 Q. Have you had calls with Fieldwood with
18 regard to the term sheet and the associated
19 documentation that was entered into between Apache
20 and Fieldwood Energy?

21 A. Yes.

22 Q. Okay. And how many calls have you had in
23 the last four months with them, for instance?

24 A. I don't know that I could estimate.

25 Q. And if Mr. Graham said that he's been on

1 weekly calls with you, that wouldn't be correct?

2 A. Weekly calls with me, that would not be
3 correct. If he had weekly calls with others at
4 Apache, that may be correct.

5 Q. Okay. Have you spoken to Mr. Graham in
6 the last four months?

7 A. Yes.

8 Q. How many times?

9 A. Once or twice.

10 Q. What was the nature of the calls?

11 A. Initially they -- I think the first call
12 I had with him was just to generally walk through an
13 outline of documents that would be relevant to
14 Fieldwood I, after he had been identified as the
15 likely sole manager of Fieldwood I. That was a very
16 high-level, just a listing of documents. And then
17 otherwise he's -- he's asked a couple of questions
18 about the farm-out agreement that I have responded
19 to and told him that I am not legal counsel for
20 Fieldwood, and therefore he would need to review
21 that separately.

22 Q. And those were the only two occasions in
23 the last four months?

24 A. He may have been involved -- or on a call
25 with a broader group of folks at Fieldwood, but I

1 don't remember any active participation from Jon in
2 such a meeting.

3 Q. Okay. And so when I asked if you --
4 there were weekly calls, I didn't mean just between
5 you and him, but with groups from Fieldwood and
6 Apache.

7 A. My understanding is at one point in time
8 there may have been calls between representatives
9 from Apache and representatives from Fieldwood and
10 Jon may have joined those at some point.

11 Q. And were you on those calls?

12 A. I was not.

13 Q. Okay. That's what I'm trying to get to
14 and I want to make sure we are in agreement on which
15 calls we're talking about and whether you were there
16 or not. It's just simple. The walkthrough that you
17 had about the agreements on Fieldwood I, how long
18 did that conversation take place with Mr. Graham?

19 A. Probably ten to 15 minutes.

20 Q. All right. And as part of that
21 discussion, did you walk through the consent rights
22 that Apache was granted under the term sheets?

23 A. I do not recall doing so.

24 Q. Okay. But that would be part and parcel
25 of a subject matter that you did speak to him, so

1 it's entirely possible that you had gone through
2 those various consent rights that Apache had to
3 Fieldwood I operations and other aspects, correct?

4 A. I do not recall walking through consent
5 rights with Jon.

6 Q. But those are in the -- those consent
7 rights are in the agreements that have been entered
8 into under the RSA and the term sheet, correct?

9 A. There are consent rights in some of those
10 agreements, yes.

11 Q. And those consent rights did not exist
12 prior to -- prior to the RSA and the term sheet
13 under the decommissioning agreement, correct?

14 A. Those agreements do not exist currently.

15 Q. They don't exist? There's no RSA?

16 A. The consent rights under the various
17 documents that were attached to the implementation
18 agreement have not been executed.

19 Q. I understand that, but the words in the
20 agreements that are there contain consent rights,
21 correct?

22 A. There are certain documents that contain
23 consent rights.

24 Q. And those documents that contain those
25 consent rights and those consent rights were not

1 included in any way in the decommissioning
2 agreement, correct?

3 A. Those documents are not included in the
4 decommissioning agreement.

5 Q. And likewise, the consent rights that are
6 part and parcel of those agreements are not part of
7 the decommissioning agreement either, correct, sir?

8 A. The decommissioning agreement sets out
9 what rights and obligations Apache has.

10 Q. Right. And you're aware that those
11 consent rights that are contained in the RSA and the
12 attached documents, the term sheet, were not rights
13 that are included in the decommissioning agreement,
14 correct?

15 A. Well, the decommissioning agreement sets
16 out the rights that Apache has.

17 Q. Correct.

18 A. Currently.

19 Q. Right. And as the 30(b)(6) witness and
20 the person who's been designated to speak on behalf
21 of the company, you're aware that the consent rights
22 that are contained in the terms and agreements that
23 are attached to the RSA were not contained in the
24 decommissioning agreement. You're aware of that,
25 aren't you, sir?

1 MR. MORFEY: Hold on a second, Brett.

2 Hold on a second.

3 I'm going to object --

4 MR. EISENBERG: Make your objection
5 and let him answer the question.

6 MR. MORFEY: I will. The terms of
7 the decommissioning agreement and what it says and
8 what it doesn't say is not what this witness is here
9 to testify on.

10 MR. EISENBERG: Again, you're
11 speaking now. Make an objection and then he can
12 answer the question.

13 MR. MORFEY: He's not going to --
14 he's not -- your question, Phil, said he's the
15 30(b)(6) witness on behalf of Apache, and I'm
16 telling you that your question isn't within the
17 topics that this witness is here to testify on.

18 MR. EISENBERG: And that's fine. I
19 think it is.

20 BY MR. EISENBERG:

21 Q. Please answer the question, sir.

22 A. The decommissioning agreement sets out
23 the rights and obligations of Apache. There are
24 certain additional agreements that are to be
25 executed as part of the restructuring.

1 Q. And those additional agreements have
2 various consent rights in them; we've established
3 that. And those consent rights that are in those
4 various agreements were not contained in the
5 decommissioning agreement, correct, sir?

6 A. The decommissioning agreement sets out
7 the terms and rights that Apache has.

8 Q. Are you telling me that those consent
9 rights are in the decommissioning agreement?

10 A. I'm telling you that the decommissioning
11 agreement sets out what rights and obligations
12 Apache has.

13 Q. I understand. I'm asking for your
14 understanding, sir. I'm asking for your
15 understanding as a 30(b)(6) deponent on behalf of
16 Apache with regard to the RSA and term sheets,
17 whether those consent rights in the term sheets are
18 in the decommissioning agreement or not?

19 MR. MORFEY: And I'm going to renew
20 my objection. He's not here as a 30(b)(6) witness
21 on the content of the decommissioning agreement.

22 MR. EISENBERG: I'm not going to
23 argue with you.

24 BY MR. EISENBERG:

25 Q. Can you answer my question, please, sir?

1 A. The decommissioning agreement sets forth
2 the terms and rights and obligations Apache has with
3 respect to decommissioning of the Fieldwood
4 property.

5 Q. And you're familiar with the terms of the
6 decommissioning agreement, sir?

7 A. Generally, yes.

8 Q. Does it contain the same consent rights
9 that are now being proposed in the term sheet?

10 MR. MORFEY: Same objection, and
11 asked and answered.

12 A. I'll renew my same answer. The
13 decommissioning agreement sets forth the terms of
14 the rights and conditions -- rights and obligations
15 Apache has with respect to decommissioning of the
16 properties.

17 BY MR. EISENBERG:

18 Q. And it does not contain the consent
19 rights that are in those term sheets, does it, sir?

20 MR. MORFEY: Same objection, asked
21 and answered.

22 A. The decommissioning agreement says what
23 it says.

24 MR. EISENBERG: He's not answering
25 the question. I'm going to keep asking the question

1 until I get an answer to the question that I've
2 asked, not the question that he wants to answer.

3 MR. MORFEY: He's answered your
4 question, Counsel.

5 MR. EISENBERG: He hasn't answered it
6 at all.

7 MR. MORFEY: You're not satisfied
8 with the answer, but we're totally outside the scope
9 of these topics and the decommissioning agreement
10 speaks for itself. You know, we're not going to
11 waste time here confirming what documents say and
12 don't say. The words are on the page. Move on,
13 please.

14 MR. EISENBERG: I get to know his
15 understanding on behalf of the corporation, sir.

16 MR. MORFEY: It's not one of the
17 topics, Phil. I'm not going to --

18 MR. EISENBERG: Instruct him not to
19 answer then, and I'll move on.

20 MR. MORFEY: Listen, I'm not going to
21 continue to waste time on this. If you show me
22 where the terms of the decommissioning agreement are
23 one of the topics, then maybe I'll reconsider, but I
24 don't see it there.

25 MR. EISENBERG: I think it's fairly

1 within the scope of the 30(b)(6). If he's not going
2 to answer me, that's fine.

3 BY MR. EISENBERG:

4 Q. Mr. Cupit, has Apache hired recently, in
5 your understanding, any former Fieldwood employees?

6 A. I'm not aware of any.

7 Q. So you're not aware whether or not Apache
8 has hired any former Fieldwood employees to help to
9 work or administer the term sheet and Apache's
10 efforts under that term sheet?

11 A. I'm not aware of any.

12 Q. Now, you're aware, sir, that Apache is
13 co-liable for the decommissioning on the properties
14 that are going into Fieldwood I, correct?

15 A. I understand that all owners in the chain
16 of title are jointly and severally liable for the
17 properties that were developed prior to and on their
18 watch during their ownership.

19 Q. So if Apache was to loan potentially any
20 money to Fieldwood I, it would simply be loaning it
21 money to perform obligations that Apache already has
22 to the government directly, correct?

23 MR. MORFEY: Objection, vague and
24 legal conclusion.

25 A. I'm not sure I understand your question.

1 BY MR. EISENBERG:

2 Q. Well, Apache already has the obligations,
3 you've indicated that. So if you're going to loan
4 Fieldwood I money to perform those obligations,
5 you're simply loaning money to Fieldwood I to
6 perform obligations that Apache already has?

7 MR. MORFEY: Same objection.

8 BY MR. EISENBERG:

9 Q. Correct?

10 A. The obligations that might be owed to the
11 government under a different time frame.

12 Q. Okay. Can Apache -- if the agreements
13 that are attached to the RSA and contained in the
14 various documents to the plan are agreed to, can
15 Apache prevent Fieldwood I from taking steps to
16 maximize the value of Fieldwood I?

17 A. Well, the agreements set forth what
18 rights and obligations Apache has.

19 Q. So could Apache veto a sale of various
20 assets from Fieldwood I?

21 A. Again, those agreements set forth what
22 rights Apache would have.

23 Q. And I'm asking your understanding of
24 those rights. Are you not going to give me your
25 understanding?

1 A. I'm going to give you that the agreements
2 are -- were extensively negotiated and set forth
3 very specific terms over what rights Apache has.

4 Q. Okay. Is it your understanding, sir,
5 that the terms of the standby loan agreement require
6 Apache to loan money to Fieldwood I?

7 A. The standby loan agreement sets forth the
8 terms and conditions under which Apache is to loan
9 money.

10 Q. And does -- do those terms require Apache
11 to loan money to Fieldwood I?

12 A. Those -- that agreement sets forth the
13 terms under which we will loan money.

14 MR. EISENBERG: All right. I'll pass
15 the witness. Thank you, Mr. Cupit.

16 MR. MORFEY: Who would like to go
17 next, if anyone?

18 MR. GRZYB: Mike, I would like to go
19 and I promise to be relatively brief.

20 MR. MORFEY: All right. I'm going to
21 hold you to it, Darren.

22 EXAMINATION

23 BY MR. GRZYB:

24 Q. Good afternoon, or still, I guess, good
25 morning, Mr. Cupit. My name is Darren Grzyb. I

1 represent four sureties. Most relevant to this
2 deposition is probably Everest.

3 The standby loan facility, what is the
4 business purpose of the standby loan facility under
5 the definitive Apache documents?

6 A. I think the standby loan agreements
7 fairly speaks for itself as to lending money to
8 Fieldwood Energy I.

9 Q. I'm not asking about the terms or any
10 legal conclusion nor anything like that. I'm asking
11 what business function that particular agreement
12 serves or will serve for Apache.

13 A. It will provide a mechanism to lend money
14 to Fieldwood Energy I.

15 Q. What business purpose would it serve
16 Apache to lend money to Fieldwood I?

17 A. It would provide Fieldwood I with capital
18 to perform obligations and operations.

19 Q. What type of obligations is it envisioned
20 from a business perspective that moneys loaned to
21 Fieldwood will serve for Apache?

22 A. The standby facilities set forth the
23 rights and uses of those lending for those proceeds.

24 Q. Well, it's -- what I'm trying to get at
25 is, you know, in terms of the negotiation of the

1 standby loan facility, there has to have been --
2 I'll rephrase the question.

3 From a business perspective, why is
4 Apache making hundreds of millions of dollars
5 potentially available for loan to Fieldwood I?

6 A. As a mechanism to potentially provide
7 capital to Fieldwood Energy I.

8 Q. Okay. What purposes will that capital
9 serve in terms of Apache's business?

10 A. The standby loan agreement sets forth the
11 uses that Fieldwood Energy I may use those proceeds
12 for.

13 Q. When you were negotiating these deals,
14 when you negotiated the standby loan facility with
15 Fieldwood, what uses did Apache want Fieldwood to
16 have with respect to loaned funds?

17 A. The standby facility sets forth the uses
18 of those loans that Fieldwood Energy may make.

19 Q. Can you name one business use of those
20 funds?

21 A. I can.

22 Q. You can or cannot?

23 A. I can.

24 Q. Please do so.

25 A. It can be used for decommissioning.

1 Q. Okay. So one of the business functions
2 of a standby loan facility is for Apache to loan
3 funds to Fieldwood I for decommissioning
4 obligations, correct?

5 A. Repeat your question.

6 Q. One of the business functions under the
7 standby loan facility that Fieldwood I can use for
8 loaned funds from Apache is for decommissioning,
9 correct?

10 A. That's correct.

11 Q. Is there any -- can you name another
12 business function for loaned funds from Apache to
13 Fieldwood I?

14 A. The standby facility sets forth the terms
15 and rights and uses for Fieldwood Energy I to use --

16 Q. I'm not asking -- thank you very much for
17 that answer. I'm not asking from a -- as to the
18 terms and conditions. I'm asking from a business
19 perspective, in your mind, as someone who was
20 involved in the negotiation on behalf of Apache with
21 respect to these documents, is there another usage
22 of the funds that are going to be loaned to
23 Fieldwood I under this facility?

24 A. And the standby facility sets forth the
25 uses that may be made. Those were negotiated and

1 agreed to by Apache.

2 Q. Okay. Is there another use -- we
3 identified decommissioning from a business
4 perspective. Is there another usage of the funds
5 that are going to be loaned by Apache to Fieldwood
6 under the facility?

7 A. The business purposes for the use of
8 those loans is set forth in the standby facility.

9 Q. I believe you said -- testified earlier
10 that projections associated with Fieldwood I's
11 operations post confirmation that may be in the
12 possession of Apache were prepared in anticipation
13 for litigation, correct?

14 A. Yes.

15 Q. Who -- with whom -- what litigation was
16 that related to?

17 A. We have always anticipated that we would
18 potentially have litigation with Fieldwood and with
19 the parties who issued security under the
20 decommissioning agreement.

21 Q. So the projections were -- I'll rephrase.
22 The anticipation associated with the
23 negotiation of the restructuring support agreement
24 led Apache to conclude that it may be in litigation
25 with the issuers of decommissioning security,

1 correct?

2 MR. MORFEY: Hold on one second.

3 Mr. Court Reporter, could you read that question
4 back. I just want to hear it one more time, please.

5 (Requested portion read back.)

6 BY MR. GRZYB:

7 Q. Mr. Cupit?

8 A. We have anticipated -- during the course
9 of this restructuring, we have anticipated that we
10 may be in litigation with the surety.

11 Q. Have you -- and I believe your testimony,
12 and correct me if I'm wrong, is that you personally,
13 on behalf of Apache, were involved with the
14 negotiation of these agreements with Fieldwood,
15 correct?

16 A. Correct.

17 Q. And is it accurate to say that Mr. Lamme
18 was your point of contact at Fieldwood with respect
19 to the negotiation of these agreements?

20 A. Mr. who?

21 Q. Lamme. I believe his name is -- or
22 Lamme?

23 A. You mean Tommy Lamme?

24 Q. Yes, that's right.

25 A. Yes. In part, yes.

1 Q. In part. And is there anyone else that
2 you dealt with at Fieldwood in negotiation of these
3 agreements?

4 A. Troy Allen.

5 Q. Is there anyone else?

6 A. And occasionally Mike Dane was on calls.

7 Q. Was there any conversations between
8 Apache and Fieldwood about the prospective of
9 litigation with the sureties?

10 A. I believe it's been mentioned in the
11 course of discussions over time.

12 Q. Can you recall the last time that that
13 topic was covered in a conversation that you had,
14 not with Mr. Morfey or Ms. Russell, but with
15 Fieldwood?

16 A. With calls that involve counsel for
17 Fieldwood and for Apache, seems like it's been
18 almost weekly since -- in the last week or so. I'm
19 sorry, last month or so.

20 Q. What was the last conversation that you
21 had?

22 MR. MORFEY: The question was when?
23 Is that the question, when?

24 MR. GRZYB: I said what's the last
25 conversation. That was probably a terrible

1 question. I'll rephrase it.

2 BY MR. GRZYB:

3 Q. When was the last conversation?

4 A. I'm sorry, my days are a little blended
5 together. It would have probably been last week.

6 Q. Last week. Do you -- what was said?

7 MR. MORFEY: Hold on a second.

8 Darren, I want to be clear. So what conversation
9 are you asking about? Who's a party to this
10 conversation?

11 MR. GRZYB: And I think you're --
12 it's a very valid interjection, Mike. And what I
13 want to make clear to Mr. Cupit and to you, is that
14 separate conversations that Mr. Cupit may have had
15 with you or Ms. Russell or whoever else is on your
16 legal team is not what I'm asking about. I'm asking
17 about conversations between Apache and Fieldwood.
18 And so I don't want know about separate
19 attorney-client conversations, I want to know
20 discussions that you may have had with Mr. Allen or
21 Mr. Lamme or Mr. Dane. And I believe Mr. Cupit's
22 testimony was we had a call last week.

23 BY MR. GRZYB:

24 Q. So I'll ask first, did you participate in
25 that call last week, Mr. Cupit?

1 MR. MORFEY: All right. Here's what
2 I think we need to figure out. And I saw Mr. Perez,
3 you know, pop on the screen here. But are these --
4 who all is in these communications in terms of the
5 attorneys involved? I know that you've limited it
6 to outside of communications that Mr. Cupit would
7 have with just, you know, my firm or in-house Apache
8 attorneys. But I think there remains an issue here
9 as to whether attorneys from the debtors were
10 involved and does that raise any matters of common
11 interest privilege or the like.

12 MR. GRZYB: I -- that's a question I
13 think that you would have to answer. Are you
14 asserting a joint defense or common interest
15 privilege that would prevent us from having a
16 conversation about topics associated, I think he
17 said in the last month among counsel -- not counsel.
18 Among Apache on one side and Fieldwood on the other.
19 I can't -- Alfredo, you're muted.

20 MR. PEREZ: Sorry about that. Yeah,
21 this is Alfredo Perez on behalf of Fieldwood. There
22 are certainly items that -- in which we do have a
23 common interest with Apache. There are other items
24 in which we don't. But there are certainly some
25 items in which we do have a common interest with

1 Apache.

2 So I'm -- you know, your question is
3 too generic for me to be able to make a -- you know,
4 an intelligent choice about whether, in fact, it
5 invokes a common interest. To the extent you're
6 asking him about, you know, obviously the
7 negotiation of the document, things like that, that
8 clearly doesn't. But to the extent you're asking
9 him about discussions relating to your objections to
10 the plan in which -- in which, you know, we're both
11 bound by an RSA, you know, that may. So I just --
12 you need to be more specific, Michael. I don't know
13 if that's what you meant, but I think that's kind of
14 where we are.

15 MR. MORFEY: Darren, what I would
16 suggest is this. Maybe ask some questions as to the
17 topic of what was discussed and that will serve, you
18 know, not the subject of the conversations but the
19 topic, and then once we know what the topics are,
20 then that will educate the other issues with respect
21 to common interest. Like Mr. Perez said, you know,
22 if it's negotiation of the documents, I think that
23 that's fair game.

24 MR. GRZYB: Let me -- I'll go down a
25 different line of questioning.

1 BY MR. GRZYB:

2 Q. Has Apache come to a business conclusion
3 as to when Fieldwood I will be required to -- let me
4 rephrase the question.

5 Does Apache have a business understanding
6 of when it believes it will have to draw on
7 decommissioning security?

8 A. I don't have a firm timeline on when we
9 might have to draw on decommissioning security.

10 Q. Does anyone at Apache have that
11 understanding?

12 A. Not that I'm aware of. And when you say
13 a time frame, I mean, like a year? Two years? I
14 don't know what your expectation is, as far as your
15 question. I guess maybe I'm saying I don't
16 understand what you're asking as far as time frame.

17 Q. A projection of when that event could
18 potentially arise, a business projection.

19 A. We have not projected a date for drawing
20 decommissioning security.

21 Q. Did any of your negotiations with
22 Fieldwood involve the surety -- an indemnification
23 obligation of Fieldwood to the sureties?

24 A. I believe that was mentioned at one
25 point.

1 Q. Who mentioned it?

2 A. I can't say that I recall offhand.

3 Q. Did you -- were you involved in any
4 negotiation with Fieldwood as to the treatment of --
5 let me rephrase.

6 Were you personally involved with the
7 negotiation with Fieldwood as to a proposed
8 treatment of the sureties indemnity agreements as
9 part of the plan of reorganization?

10 A. I recall a comment that was made I
11 believe by Fieldwood, that the intention was that
12 indemnity agreements with the sureties were going to
13 be -- I'm not sure of the proper term, but
14 essentially removed in the course of -- they were
15 unsecured claims under the bankruptcy and would be
16 treated as such.

17 Q. Post -- was it a requirement that -- of
18 Apache's that -- I'll strike the question.

19 MR. GRZYB: I have no further
20 questions, so I'll pass the witness. Thank you.

21 MR. MORFEY: Who would like to go
22 next? Going once. Going twice. All right. With
23 no takers --

24 MR. BERNAL: Michael, I've got a
25 question. Brett, where are you going to dinner

1 tonight?

2 THE WITNESS: I'm hoping to go to a
3 location in Sugar Land called Vino & Vinyl.

4 MR. EISENBERG: Y'all are still on
5 the record. You might want to get off the record.

6 MR. BERNAL: That was on purpose,
7 Phil. I wanted his wife to know he knew the name of
8 the restaurant.

9 MR. EISENBERG: Okay.

10 THE WITNESS: There's proof now.

11 MR. MORFEY: All right.

12 MR. ROBERTS: We're off the record
13 now.

14 MR. MORFEY: Yeah, let's go off the
15 record.

16 (Deposition concluded at 11:54 a.m.)

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1 CORRECTIONS AND SIGNATURE

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14 _____

15 I, BRETT CUPIT, have read the foregoing
 16 deposition and hereby affix my signature that same
 17 is true and correct except as noted herein.

18 _____
 BRETT CUPIT

19 STATE OF _____)
 COUNTY OF _____)

20 Subscribed and sworn to before me by the
 21 said witness, BRETT CUPIT, on this the _____ day
 22 of _____, 2021.

23 _____
 NOTARY PUBLIC IN AND FOR
 24 THE STATE OF _____


25 My Commission Expires: _____

REPORTER'S CERTIFICATION

I, Micheal A. Johnson, Registered Diplomat
Reporter and Certified Realtime Reporter, certify
that on the 3rd day of June, 2021, I reported the
Remote Oral Deposition of BRETT CUPIT, after the
witness had first been duly cautioned and sworn to
testify under oath; said deposition was subsequently
transcribed by me and under my supervision and
contains a full, true and complete transcription of
the proceedings had at said time and place; and that
reading and signing was requested.

I further certify that I am neither counsel
for nor related to any party in this cause and am
not financially interested in its outcome.

GIVEN UNDER MY HAND AND SEAL of office on
this 6th day of June, 2021.


MICHEAL A. JOHNSON, RDR, CRR
NCRA Registered Diplomat Reporter
NCRA Certified Realtime Reporter



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